

***Chapter 17***  
***WSDOT Standard Agreements***

Some organizations have legal services within their operation. Others acquire such services on an as need basis, usually after getting into contractual problems.

We have included copies of standard WSDOT consultant agreements.

We highly recommend that when entering into an agreement with WSDOT, that someone of authority and those close to the agreement read the complete agreement!

It may save you trouble in the end.

In order for you to become familiar with the types of agreements used by WSDOT, we have provided the following:

- Cost Plus a Fixed Fee
- Negotiated Hourly Rates
- Task Order Negotiated Hourly Rates
- Provisional Hourly Rates
- Task Order Provisional Hourly Rates
- Lump Sum

Negotiated hourly rate and provisional hourly rate agreements may also be called all-inclusive hourly rate agreements.

If prior to signing the agreement or if during the course of performing the work the firm has any questions regarding the eligibility of costs or procedures for doing something, contact the WSDOT consultant coordinator for an explanation!

# 1999 Professional Services Consultant Agreement — Cost Plus a Fixed Fee

<b>1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT COST PLUS A FIXED FEE</b>		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required <input type="checkbox"/> YES <input type="checkbox"/> NO
Completion Date	Federal Aid Number (If Applicable)	Unified Business Identifier (UBI) Number	Fixed Fee
Overhead Progress Payment Rate _____ % Overhead Method <input type="checkbox"/> _____ % Fixed Rate <input type="checkbox"/> _____ % Actual Cost		Project Title and Description of Work:	
DBE Participation <input type="checkbox"/> YES <input type="checkbox"/> NO _____ % MBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO _____ % WBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO _____ %		Total Amount Authorized  Management Reserve Fund  Maximum Amount Payable _____	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT, and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the STATE,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## I

### General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

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## II Scope of Work

The Scope of Work and projected level of effort required for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

## III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "B" attached hereto and made part of this Agreement. The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

## IV Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

## V Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

- A. Actual Costs: Payment for all consulting services for this project shall be on the basis of the CONSULTANT's actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, direct non-salary costs and fixed fee.

1. Direct Salary Costs: The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the STATE.

2. Overhead Costs: Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under "Overhead Progress Payment Rate". Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The two options are explained as follows:

- a. Fixed Rate: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.
- b. Actual Cost: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to the maximum total amount payable, authorized under this AGREEMENT, when accumulated with all other actual costs.

A summary of the CONSULTANT's cost estimate and the overhead computation are attached hereto as Exhibit "C" and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all subconsultants) will submit to the STATE within six (6) months after the end of each firm's fiscal year, an overhead schedule in the format required by the STATE (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate. This information will be sent to the Consultant Service's Office.

FAILURE TO SUPPLY THIS INFORMATION BY EITHER THE PRIME CONSULTANT OR ANY OF THE SUBCONSULTANTS SHALL CAUSE THE STATE TO WITHHOLD PAYMENT OF THE BILLED OVERHEAD COSTS UNTIL SUCH TIME AS THE REQUIRED INFORMATION IS RECEIVED AND AN OVERHEAD RATE FOR BILLING PURPOSES IS APPROVED.

The STATE and/or the Federal Government may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the

original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.

4. **Fixed Fee:** The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional fixed fee which could be authorized from the Management Reserve Fund. This fee is based on the scope of work defined in this agreement and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provisions for the added costs and an appropriate additional fee. The fixed fee will be pro-rated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices. Any portion of the fixed fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
  5. **Management Reserve Fund:** The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."
  6. **Maximum Total Amount Payable:** The Maximum Total Amount Payable, by the STATE to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, which includes the Fixed Fee and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."
- B. Monthly Progress Payments:** The CONSULTANT may submit invoices to the STATE for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the STATE and accompanied by the monthly progress reports required under GENERAL REQUIREMENTS, of this AGREEMENT. The invoices will be supported by itemized listing for each item including direct salary, direct non-salary and allowable overhead costs to which will be added the pro-rated Fixed Fee. To provide a means of verifying the invoiced salary costs for CONSULTANT employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment:** Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all

claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

- D. Inspection of Cost Records:** The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

## VI

### Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

## VII

### Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

### VIII Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives

issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

### IX Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the actual costs plus the same percentage of the Fixed Fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.



In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### **X Changes of Work**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### **XII**

##### **Venue, Applicable Law and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### **XIII**

##### **Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

##### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for

bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).

- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by this AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator  
Washington State Department of Transportation  
Transportation Building  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV Extra Work**

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall

not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### **XVI Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### **XVII Certification of the Consultant and the State**

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

#### **XVIII Complete Agreement**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### **XIX Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

By \_\_\_\_\_

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_

Assistant Secretary for the  
Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.



# 1999 Professional Services Consultant Agreement — Negotiated Hourly Rates

<p align="center"><b>1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT NEGOTIATED HOURLY RATES</b></p>		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? <input type="checkbox"/> YES <input type="checkbox"/> NO
Completion Date	Federal Aid Number (If Applicable)	Project Title and Description of Work:	
Unified Business Identifier (UBI) Number			
DBE Participation <input type="checkbox"/> YES <input type="checkbox"/> NO    _____%		Total Amount Authorized  Management Reserve Fund    _____  Maximum Amount Payable	
MBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO    _____%			
WBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO    _____%			

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT, and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the STATE.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## I

### General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## II

### Scope of Work

The Scope of Work for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

01/99

### III

#### General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E." All Reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

### V

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

1. **Hourly Rates:** The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit C attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive

of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

2. **Direct Non-Salary Costs:** Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
3. **Management Reserve Fund:** The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
4. **Maximum Amount Payable:** The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
6. **Inspection of Cost Records:** The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three year retention period begins when the CONSULTANT receives final payment.
7. **Final Payment:** Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its

verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

#### VII

##### Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct nonsalary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII

##### Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission

on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII

##### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: The CONSULTANT shall comply with all regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  - 2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

## IX

### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which may be required to do so,

and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## X

### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## XI

### Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

## XII

### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right

of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

#### Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washing-

ton, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator  
Washington State Department of Transportation  
Transportation Building  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

### XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

### XV Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.



**XVI  
Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

**XVII  
Certification of the Consultant and the State**

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

**XVIII  
Complete Agreement**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX  
Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_ By \_\_\_\_\_  
Assistant Secretary for the Environmental and Engineering  
Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.



# 1999 Professional Services Consultant Agreement Task Order — Negotiated Hourly Rates

<b>1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT TASK ORDER NEGOTIATED HOURLY RATES</b>		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? <input type="checkbox"/> YES <input type="checkbox"/> NO
Completion Date	Federal Aid Number (If Applicable)	Unified Business Identifier (UBI) Number	
DBE Participation <input type="checkbox"/> YES <input type="checkbox"/> NO _____%  MBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO _____%  WBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO _____%		Project Title and Description of Work:          Total Amount Authorized Management Reserve Fund _____ Maximum Amount Payable _____	

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WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT, and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

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01/99

Each item of work under this AGREEMENT will be provided by Task Assignment(s). Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the STATE.

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#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

1. Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following

twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

2. Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D 13-50 and revisions thereto. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
3. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
4. Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.

6. **Inspection of Cost Records:** The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.
7. **Final Payment:** Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

## VI

### Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

## VII

### Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

## VIII

### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

## IX

### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the

CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## X

### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## XI

### Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this



AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

## XII

### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

## XIII

### Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

01/99

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator  
Washington State Department of Transportation  
Transportation Building  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

## XIV

### Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.

- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XV  
Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI  
Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

**XVII  
Certification of the Consultant and the State**

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

**XVIII  
Complete Agreement**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX  
Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_

By \_\_\_\_\_  
Assistant Secretary for the  
Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.



# 1999 Professional Services Consultant Agreement — Provisional Hourly Rates

<b>1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT PROVISIONAL HOURLY RATES</b>		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? <input type="checkbox"/> YES <input type="checkbox"/> NO
		Unified Business Identifier (UBI) Number	
Completion Date	Federal Aid Number (If Applicable)	Project Title and Description of Work:	
DBE Participation <input type="checkbox"/> YES <input type="checkbox"/> NO _____%  MBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO _____%  WBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO _____%			
		Total Amount Authorized  Management Reserve Fund  Maximum Amount Payable _____	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT, and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the STATE.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## I

### General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## II

### Scope of Work

The Scope of Work for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

01/99

### III

#### General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Owned Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E." All Reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

### V

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable provisions of 48 CFR 31.

1. **Hourly Rates:** The CONSULTANT shall be paid by the STATE for work done based upon the provisional hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREEMENT. The actual hourly rates will be determined by an audit of the CONSULTANT's last completed fiscal year and/or their current projected fiscal year. The provisional and/or audited rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written

authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

2. **Direct Non-Salary Costs:** Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
3. **Management Reserve Fund:** The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
4. **Maximum Amount Payable:** The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
6. **Inspection of Cost Records:** The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started

before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.

7. Final Payment: Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

#### VI Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

- D. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the contract, in whole or in part.

- F. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

- G. **Unfair Employment Practices:** The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

## IX

### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## X

### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## XI

### Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

**XII****Venue, Applicable Law and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

**XIII****Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

**Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for

bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).

- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator  
Washington State Department of Transportation  
Transportation Building  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million dollars (\$1,000,000), whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

**XIV****Extra Work**

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.



E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XV  
Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI  
Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

**XVII  
Certification of the Consultant and the State**

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

**XVIII  
Complete Agreement**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX  
Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_

By \_\_\_\_\_

Assistant Secretary for the Environmental and  
Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.



# 1999 Professional Services Consultant Agreement Task Order — Provisional Hourly Rates

<b>1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT TASK ORDER PROVISIONAL HOURLY RATES</b>		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? <input type="checkbox"/> YES <input type="checkbox"/> NO
Unified Business Identifier (UBI) Number		Project Title and Description of Work:	
Completion Date	Federal Aid Number (If Applicable)		
DBE Participation <input type="checkbox"/> YES <input type="checkbox"/> NO    _____%			
MBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO    _____%			
WBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO    _____%		Total Amount Authorized Management Reserve Fund _____ Maximum Amount Payable _____	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT, and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the STATE.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## I

### General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## II

### Scope of Work

The Scope of Work for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

01/99

Each item of work under this AGREEMENT will be provided by Task Assignment(s). Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the STATE.

### III

#### General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All Reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

### V

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

1. **Hourly Rates:** The CONSULTANT shall be paid by the STATE for work done, based upon the provisional hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREEMENT. The actual hourly rates will be determined by an audit of the CONSULTANT's last completed fiscal year and/or their current projected fiscal year. The provisional and/or audited rates listed shall

be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

2. **Direct Non-Salary Costs:** Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
3. **Management Reserve Fund:** The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
4. **Maximum Amount Payable:** The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.

6. **Inspection of Cost Records:** The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.

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The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

## VII

### Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

## VIII

### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations:** The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the contract, in whole or in part.

- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

## IX

### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the

CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## X

### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## XI

### Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging

the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

## XII

### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

## XIII

### Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator  
Washington State Department of Transportation  
Transportation Building  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

## XIV

### Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.



- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XV**

**Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI**

**Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

**XVII**

**Certification of the Consultant and the State**

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

**XVIII**

**Complete Agreement**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX**

**Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_

By \_\_\_\_\_  
Assistant Secretary for the  
Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.



# 1999 Professional Services Consultant Agreement — Lump Sum

<b>1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT LUMP SUM</b>		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? <input type="checkbox"/> YES <input type="checkbox"/> NO
Completion Date	Federal Aid Number (If Applicable)	Project Title and Description of Work:        DBE Participation <input type="checkbox"/> YES <input type="checkbox"/> NO    _____ %  MBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO    _____ %  WBE Participation (Voluntary) <input type="checkbox"/> YES <input type="checkbox"/> NO    _____ %	
Unified Business Identifier (UBI) Number			
Lump Sum Amount			
Management Reserve Fund Amount			
Maximum Amount Payable			

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT, and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the STATE.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## I

### General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## II

### Scope of Work

The Scope of Work and projected level of effort required for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

01/99

### III

#### General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, City or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the STATE. Reuse by the STATE or by others acting through on behalf of the STATE of any such instruments of service, not occurring as part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

### V

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "C" and hereby made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting services for this project shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
1. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in

serve Fund is shown in the heading of the AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".

2. Maximum Total Amount Payable: The Maximum Total Amount Payable, by the STATE to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Lump Sum Amount and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."
- B. Monthly Progress Payments: Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed, and are not to be more frequent than one (1) per month. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT agrees to refund such overpayment to the STATE within thirty (30) days of notice if any such payment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

### VI

#### Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

## VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

## VIII Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance With Regulations:** The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

## VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

## VIII Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance With Regulations:** The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.



G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O 77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

## IX

### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will

not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## X

### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## XI

### Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

## XII

### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

## XIII

### Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.



The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

#### Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation shall be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator  
Washington State Department of Transportation  
Transportation Building  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### XV Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### XVI Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### XVII Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

#### XVIII Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX**

**Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION

By \_\_\_\_\_

By \_\_\_\_\_

Assistant Secretary for the  
Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

